

Introduced by Senator Gaines

February 22, 2013

An act to amend Section 699.510 of the Code of Civil Procedure, relating to enforcement of judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 551, as introduced, Gaines. Writs of execution: judgment debtor.

Existing law requires that, after entry of a money judgment, a writ of execution be issued by the clerk of the court upon application by the judgment creditor, and directed to the levying officer in the county where the levy is to be made and to any registered process server.

This bill would authorize the judgment creditor to omit the name of a judgment debtor from the application for a writ of execution if the liability of that judgment debtor has ceased with regard to the judgment. The bill would specify the conditions upon which a judgment debtor's liability would be deemed to have ceased for this purpose.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 699.510 of the Code of Civil Procedure
- 2 is amended to read:
- 3 699.510. (a) Subject to subdivision (b), after entry of a money
- 4 judgment, a writ of execution shall be issued by the clerk of the
- 5 court, upon application of the judgment creditor, and shall be
- 6 directed to the levying officer in the county where the levy is to
- 7 be made and to any registered process server. The clerk of the
- 8 court shall give priority to the application for, and issuance of,

1 writs of execution on orders or judgments for child support and
2 spousal support. A separate writ shall be issued for each county
3 where a levy is to be made. Writs may be issued successively until
4 the money judgment is satisfied, except that a new writ may not
5 be issued for a county until the expiration of 180 days after the
6 issuance of a prior writ for that county unless the prior writ is first
7 returned.

8 (b) If the judgment creditor seeks a writ of execution to enforce
9 a judgment made, entered, or enforceable pursuant to the Family
10 Code, in addition to the requirements of this article, the judgment
11 creditor shall satisfy the requirements of any applicable provisions
12 of the Family Code.

13 (c) (1) The writ of execution shall be issued in the name of the
14 judgment debtor as listed on the judgment and shall include the
15 additional name or names, and the type of legal entity, by which
16 the judgment debtor is known, as set forth in the affidavit of
17 identity, as defined in Section 680.135, filed by the judgment
18 creditor with the application for issuance of the writ of execution.
19 Prior to the clerk of the court issuing a writ of execution containing
20 any additional name or names by which the judgment debtor is
21 known that are not listed on the judgment, the court shall approve
22 the affidavit of identity. If the court determines, without a hearing
23 or a notice, that the affidavit of identity states sufficient facts upon
24 which the judgment creditor has identified the additional names
25 of the judgment debtor, the court shall authorize the issuance of
26 the writ of execution with the additional name or names.

27 (2) In any case where the writ of execution lists any name other
28 than that listed on the judgment, the person in possession or control
29 of the levied property, if other than the judgment debtor, shall not
30 pay to the levying officer the amount or deliver the property being
31 levied upon until being notified to do so by the levying officer.
32 The levying officer may not require the person, if other than the
33 judgment debtor, in possession or control of the levied property
34 to pay the amount or deliver the property levied upon until the
35 expiration of 15 days after service of notice of levy.

36 (3) If a person who is not the judgment debtor has property
37 erroneously subject to an enforcement of judgment proceeding
38 based upon an affidavit of identity, the person shall be entitled to
39 the recovery of reasonable attorney's fees and costs from the
40 judgment creditor incurred in releasing the person's property from

1 a writ of execution, in addition to any other damages or penalties
2 to which an aggrieved person may be entitled to by law, including
3 Division 4 (commencing with Section 720.010).

4 *(d) The judgment creditor may omit the name of a judgment*
5 *debtor from the application for a writ of execution if the liability*
6 *of that judgment debtor has ceased with regard to the judgment.*
7 *For purposes of this subdivision, a judgment debtor's liability has*
8 *ceased with regard to a judgment if, before the writ of execution*
9 *is issued, either of the following occur:*

10 *(1) The judgment debtor files a petition in bankruptcy pursuant*
11 *to Title 11 of the United States Code, and the bankruptcy court*
12 *grants an automatic stay or a discharge that applies to the*
13 *judgment.*

14 *(2) The judgment creditor files an acknowledgment of*
15 *satisfaction of judgment with regard to the judgment debtor*
16 *pursuant to Chapter 1 (commencing with Section 724.010) of*
17 *Division 5.*